RECORD
AND
BRIEFS

No. 15-1439

IN THE
Supreme Court of the United States

CYAN, INC., *et al.*,

Petitioners,

v.

BEAVER COUNTY EMPLOYEES RETIREMENT FUND, *et al.*,

Respondents.

On Writ of Certiorari to the
Court of Appeal of the State of California,
First Appellate District

JOINT APPENDIX

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PETITION FOR A WRIT OF CERTIORARI FILED: MAY 24, 2016
CERTIORARI GRANTED: JUNE 27, 2017

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THE SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Case No. CGC14538355

BEAVER COUNTY EMPLOYEES RETIREMENT FUND et al.,

Plaintiffs,

vs.

CYAN, INC. et al.,

Defendants.

Cause of Action:
SECURITIES/INVESTMENT

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2014-04-01	SECURITIES/INVESTMENT, COMPLAINT FILED BY PLAINTIFF BEAVER COUNTY EMPLOYEES RETIREMENT FUND, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED RETIREMENT BOARD OF ALLEGHENY COUNTY, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED DELAWARE COUNTY EMPLOYEES RETIREMENT SYSTEM, INDIVIDUALLY AND ON BEHALF OF ALL OTHERS SIMILARLY SITUATED AS TO DE-

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* * *

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2014-07-22	DEMURRER TO 1ST AMENDED COMPLAINT (TRANSACTION ID # 55768808) FILED BY DEFENDANT CYAN, INC. FLOYD, MARK A. ZELLNER, MICHAEL W. HATFIELD, MICHAEL L. FERRIS, PAUL A. HAQUE, PROMOD RANSOM, M. NIEL BOUSTRIDGE, MICHAEL J. SWITZ, ROBERT E. HEARING SET FOR OCT-17-2014 AT 01:30 PM IN DEPT 305
2014-07-22	MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF CY-AN DEFENDANTS DEMURRER TO CONSOLIDATED COMPLAINT (TRANSACTION ID # 55768808) FILED BY DEFENDANT CYAN, INC. FLOYD, MARK A. HATFIELD, MI-CHAEL L. FERRIS, PAUL A. BOUSTRIDGE, MICHAEL J.
2014-07-22	REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF CYAN DEFEND-ANTS DEMURRER TO CONSOLI-DATED COMPLAINT (TRANSAC-TION ID # 55768808) FILED BY DE-FENDANT CYAN, INC. FLOYD, MARK A. FERRIS, PAUL A. HAQUE, PROMOD BOUSTRIDGE, MICHAEL J.
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Date	Proceedings
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2015-08-25	MEMORANDUM OF POINTS AND AUTHORITIES (TRANSACTION ID # 57766833) FILED BY DEFENDANT CYAN, INC. FLOYD, MARK A. ZELLNER, MICHAEL W. HATFIELD, MICHAEL L. FERRIS, PAUL A. HAQUE, PROMOD RANSOM, M. NIEL BOUSTRIDGE, MICHAEL J. SWITZ, ROBERT E.
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	* * *
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SUPERIOR COURT OF
THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

Lead Case No. CGC-14-538355
(Consolidated with No. CGC-14-539008)

BEAVER COUNTY EMPLOYEES RETIREMENT FUND, et al., Individually and on Behalf of All Others Similarly Situated,

Plaintiffs,

vs.

CYAN, INC., et al.,

Defendants.

CLASS ACTION

CONSOLIDATED COMPLAINT FOR VIOLATIONS OF: (1) §11 OF THE SECURITIES ACT OF 1933; (2) §12(A)(2) OF THE SECURITIES ACT OF 1933; AND (3) §15 OF THE SECURITIES ACT OF 1933

DATE ACTION FILED: 04/01/14

DEMAND FOR JURY TRIAL

Plaintiffs Beaver County Employees Retirement Fund, Retirement Board of Allegheny County, Delaware County Employees Retirement System and Jennifer Fleischer ("Plaintiffs") individually and on behalf of all others similarly situated, allege the following based upon personal knowledge as to Plaintiffs and Plaintiffs' own acts, and upon information

and belief as to all other matters based on the investigation conducted by and through Plaintiffs' attorneys, which included, among other things, a review of Cyan, Inc.'s ("Cyan" or the "Company") press releases, Securities and Exchange Commission ("SEC") filings, analyst reports, media reports and other publicly disclosed reports and information about defendants. Plaintiffs believe that substantial evidentiary support will exist for the allegations set forth herein after a reasonable opportunity for discovery.

NATURE OF THE ACTION

1. This is a securities class action on behalf of all purchasers of the common stock of Cyan pursuant and/or traceable to the Registration Statement and Prospectus issued in connection with Cyan's May 9, 2013 initial public stock offering (the "IPO"), seeking to pursue strict liability remedies under the Securities Act of 1933 (the "1933 Act").

JURISDICTION AND VENUE

2. The claims alleged herein arise under §§11, 12(a)(2) and 15 of the 1933 Act, 15 U.S.C. §§77k, 771(a)(2) and 77o. Jurisdiction is conferred by §22 of the 1933 Act and venue is proper pursuant to §22 of the 1933 Act. Section 22 of the 1933 Act explicitly states that "[e]xcept as provided in section 16(c), no case arising under this title and brought in any State court of competent jurisdiction shall be removed to any court in the United States." Section 16(c) refers to "covered class actions," which are defined as lawsuits brought as class actions or brought on behalf of more than 50 persons asserting claims under state or common law. This is an action asserting federal law claims. Thus, it does not fall within the definition of a "covered class action" under § 16(b)-(c) and ***is***

therefore is not removable to federal court, under the Securities Litigation Uniform Standards Act of 1998 or otherwise. *See Luther v. Countrywide Fin. Corp.*, 195 Cal. App. 4th 789, 792 (2011) ("The federal Securities Act of 1933, as amended by the Securities Litigation Uniform Standards Act, provides for concurrent jurisdiction for cases asserting claims under the 1933 Act . . . .") (citations omitted); *Luther v. Countrywide Home Loans Servicing LP*, 533 F.3d 1031, 1032 (9th Cir. 2008) ("Section 22(a) of the Securities Act of 1933 creates concurrent jurisdiction in state and federal courts over claims arising under the Act. It also specifically provides that such claims brought in state court are not subject to removal to federal court.").

3. The violations of law complained of herein occurred in this State and in large part in this County, including the dissemination of the materially false and misleading statements complained of herein into this State and into this County. Each of the Underwriter Defendants (as defined below) has a sizable San Francisco office and maintains substantial and continuous contact with California by conducting significant investment banking operations in this County and throughout this State. Furthermore, the San Francisco office of Cooley LLP represented the Underwriter Defendants in the IPO and, therefore, significant drafting of the Registration Statement took place in San Francisco, as did efforts to organize and coordinate the road show to sell the IPO.

PARTIES

4. Plaintiffs Beaver County Employees Retirement Fund, Retirement Board of Allegheny County, Delaware County Employees Retirement System and Jennifer Fleischer purchased Cyan common stock

pursuant and/or traceable to the IPO, and were damaged thereby.

5. Defendant Cyan is a Petaluma, California-based telecommunications hardware and software company whose main products consist of optical networking hardware and related management software.

6. Defendant Mark A. Floyd ("Floyd") is, and was at the time of the IPO, Cyan's Chief Executive Officer ("CEO"), a director and Chairman of Cyan's Board of Directors.

7. Defendant Michael W. Zellner ("Zellner") was, at the time of the IPO, Cyan's Chief Financial Officer ("CFO").

8. Defendant Michael L. Hatfield ("Hatfield") is, and was at the time of the IPO, the President of Cyan and one of its directors.

9. Defendant Paul A. Ferris ("Ferris") is, and was at the time of the IPO, a Cyan director.

10. Defendant Promod Haque ("Haque") is, and was at the time of the IPO, a Cyan director.

11. Defendant M. Niel Ransom ("Ransom") is, and was at the time of the IPO, a Cyan director.

12. Defendant Michael J. Boustridge ("Boustridge") is, and was at the time of the IPO, a Cyan director.

13. Defendant Robert E. Switz ("Switz") is, and was at the time of the IPO, a Cyan director.

14. The defendants referenced above in ¶¶6-13 are referred to herein as the "Individual Defendants." The Individual Defendants each signed the Registration Statement. The defendants referenced above in ¶¶6-8 are, or were, executives of Cyan, participated

in the roadshow to sell the IPO and are sometimes referred to herein as the "Executive Defendants."

15. Defendant Goldman Sachs & Co. ("Goldman Sachs") is an American multinational investment banking firm that engages in global investment banking, securities, investment management, and other financial services primarily with institutional clients. Goldman Sachs acted as an underwriter and joint book-running manager of Cyan's IPO, helping to draft and disseminate the offering documents.

16. Defendant J.P. Morgan Securities LLC ("J.P. Morgan") is an investment banking and security brokerage service that also provides cash and wealth management, stock and options management, and education and retirement planning services. J.P. Morgan acted as an underwriter and joint book-running manager of Cyan's IPO, helping to draft and disseminate the offering documents.

17. Defendant Jefferies LLC ("Jefferies") is an American global investment banking and institutional securities firm. Jefferies acted as an underwriter of Cyan's IPO, helping to draft and disseminate the offering documents.

18. Defendant Pacific Crest Securities LLC ("Pacific Crest") is an investment banking firm that provides financial advisory services to public and privately held technology companies. Pacific Crest acted as an underwriter of Cyan's IPO, helping to draft and disseminate the offering documents.

19. The defendants named in ¶¶15-18 are referred to herein as the "Underwriter Defendants." Pursuant to the 1933 Act, the Underwriter Defendants are liable for the statements in the Registration Statement as follows:

(a) The Underwriter Defendants are investment banking houses which specialize, *inter alia*, in underwriting public offerings of securities. They served as the underwriters of the IPO and shared more than $7 million in fees collectively. The Underwriter Defendants determined that in return for their share of the IPO proceeds, they were willing to merchandize Cyan stock in the IPO. The Underwriter Defendants arranged a multi-city roadshow prior to the IPO during which they, and the Executive Defendants, met with potential investors and presented highly favorable information about the Company, its operations, and its financial prospects.

(b) Representatives of the Underwriter Defendants also assisted Cyan and the Individual Defendants in planning the IPO, and purportedly conducted an adequate and reasonable investigation into the business and operations of Cyan, an undertaking known as a "due diligence" investigation. The due diligence investigation was required of the Underwriter Defendants in order to engage in the IPO. During the course of their "due diligence," the Underwriter Defendants had continual access to confidential corporate information concerning Cyan's operations and financial prospects.

(c) In addition to availing themselves of virtually unbridled access to internal corporate documents, agents of the Underwriter Defendants, including their counsel at Cooley LLP, of San Francisco, California, met with Cyan's management and top executives and engaged in "drafting sessions" between at least December 2012 and May 2013. During these sessions, understandings were reached as to: (i) the strategy to best accomplish the IPO; (ii) the terms of the IPO, including the price at which Cyan

stock would be sold; (iii) the language to be used in the Registration Statement; (iv) what disclosures about Cyan would be made in the Registration Statement; and (v) what responses would be made to the SEC in connection with its review of the Registration Statement. As a result of those constant contacts and communications between the Underwriter Defendants' representatives in San Francisco, California and management and top executives, the Underwriter Defendants should have known of Cyan's existing problems as detailed herein.

(d) The Underwriter Defendants caused the Registration Statement to be filed with the SEC and declared effective in connection with offers and sales thereof, including to Plaintiffs and the Class.

20. The true names and capacities of defendants sued herein under California Code of Civil Procedure §474 as Does 1 through 25, inclusive, are presently not known to Plaintiffs, who therefore sue these defendants by such fictitious names. Plaintiffs will seek to amend this Complaint and include these Doe defendants' true names and capacities when they are ascertained. Each of the fictitiously named defendants is responsible in some manner for the conduct alleged herein and for the injuries suffered by Plaintiffs and the Class.

SUBSTANTIVE ALLEGATIONS

21. Defendant Cyan was founded in 2006. The Company supplies hardware modules and software that supports switching and packet transport support for internet networking services. Cyan's three primary product offerings include: (i) the Z-Series multi-layer packet-optical transport platforms released in 2009; (ii) the Cyan PRO comprehensive pro-

fessional services released in 2011; and (iii) the Blue Planet SDN software released in December 2012.

22. As of 2012, almost all of the Company's sales had been of its Z-Series product. The Blue Planet software line, which supported software defined networks, was yet untested and would only be released in December 2012. The Company's largest customer was Windstream Corporation ("Windstream"), who had been using Cyan's Z-Series platform. Windstream is a leading provider of advanced network communications, including cloud computing and managed services, to businesses nationwide. Windstream also offers broadband, phone and digital TV services to consumers primarily in rural areas. For the fiscal years ended December 31, 2011 and 2012, and the three months ended March 31, 2013, Windstream had accounted for approximately 37%, 45% and 47% of Cyan's revenue, respectively. All orders by Windstream were made pursuant to purchase orders and the Company had no long-term purchase commitment with Windstream. As 2012 drew to a close, Windstream announced it was cutting upwards of 400 management jobs and had publicly stated that it was cutting 2013 capital expenditures.

23. So, on the heels of just having very recently increased its annual sales exponentially – largely to Windstream – from $23.8 million in fiscal 2010 to $40.4 million in fiscal 2011 and to $95.872 million in fiscal 2012, and having only recently released its new commercially untested Blue Planet software offering in December 2012, on or about April 4, 2013, Cyan filed with the SEC its Registration Statement on Form S-1, which, following several subsequent filings and amendments in response to comments from the SEC in letters dated January 16, 2013, March 15,

2013 and April 17, 2013, would later be utilized for the IPO (the "Registration Statement"). On May 8, 2013, the SEC declared the Registration Statement effective. On or about May 9, 2013, Cyan and the Underwriter Defendants priced the IPO and filed the final Prospectus for the IPO, which forms part of the Registration Statement (collectively, the "Registration Statement").

24. The Registration Statement was negligently prepared and, as a result, contained untrue statements of material fact or omitted to state other facts necessary to make the statements made not misleading, and was not prepared in accordance with the rules and regulations governing its preparation.

25. The Registration Statement positively described the demand for Cyan's product offerings in the networking industry at the time of the IPO. The Registration Statement stated, in pertinent part, as follows:

> ***New applications and communications trends are driving tremendous growth in bandwidth demand, resulting in increased service requirements as well as dramatic shifts in overall network traffic patterns***. At the same time, competition from traditional vendors as well as new market entrants is limiting service providers' ability to sustain and grow revenue. ***As a result, service providers must upgrade their networks to handle the exponential scaling challenges driven by these trends as well as to profitably deliver the growing breadth of premium services demanded by their subscribers***. Other network operators are also facing these scalability requirements

while seeking to deliver new applications that improve the productivity and efficiency of their businesses. ***We designed our solutions to enable network operators to address these challenges while scaling their networks and services efficiently***.

26. The Registration Statement emphasized the Company's purportedly steadily growing revenues, right up through the IPO, stating, in pertinent part, as follows:

> Our revenue increased from $23.5 million in the year ended December 31, 2010 to $40.4 million in the year ended December 31, 2011, and to $95.9 million in the year ended December 31, 2012, ***and from $14.2 million in the three months ended March 31, 2012 to $26.3 million in the three months ended March 31, 2013***.
>
> * * *
>
> ***We believe that an improving economy, continued growth in bandwidth demand and increased acceptance of our software-defined networking technology and our high-capacity, multi-layer switching and transport platforms, as an alternative to router-based architecture, contributed to our revenue growth. To drive and support this growing demand and increase our revenue, we increased our sales and marketing headcount from March 31, 2012 to March 31, 2013***.
>
> * * *
>
> ***Quarterly Revenue Trends***

> . . . ***We generally expect an increase in business activity as we approach December,*** as some of our customers accelerate spending to use remaining capital budget dollars.

27. The statements referenced above in ¶¶25 and 26 were each materially false and misleading because they failed to disclose and misrepresented the following adverse facts that existed at the time of the IPO:

(a) that Windstream would dramatically reduce its purchases from Cyan due to the expected completion of Windstreams fiber-to-the-tower and broadband stimulus programs in the second half of 2013; and

(b) that Cyan was not successfully expanding and diversifying its customer base at the time of the IPO.

28. The Registration Statement stated that:

> Windstream has publicly indicated its intention to reduce its overall capital expenditures in 2013. Accordingly, we expect our sales to decline in future periods. Nonetheless, we anticipate that a large portion of our revenue will continue to depend on sales to Windstream.

This statement was misleading because it advised investors that sales to Windstream would continue to be a large portion of Cyan's revenues, when in fact the bulk of sales to Windstream were dependent on Windstream's participation in Verizon's fiber-to-the-tower project, and in the broadband stimulus initiative. With the expected completion of these projects in the immediate future, sales to Windstream would largely dry up.

29. The Registration Statement purported to warn about the risks associated with Windstream's announcement of capital expenditure reductions, stating in pertinent part as follows:

> ***We currently generate the majority of our revenue from a concentrated base of customers, including Windstream Corporation. Since Windstream has publicly indicated its intent to reduce its overall capital expenditures in 2013, unless we can substantially expand our sales to other existing or new customers, we will not be able to grow our revenue.***

This statement was inadequate to warn investors of the true risks associated with Cyan and its dependence on Windstream.

30. The Registration Statement purported to warn that "our largest customer, Windstream Corporation, has publicly indicated its intention to reduce its ***overall capital expenditures*** in 2013, and, as a result, our operating results ***may be harmed if we are unable to expand our sales*** to other existing or new customers." Yet, at the time of the IPO, the programs at Windstream supporting purchases from Cyan were already reaching their end and Cyan was already failing in its efforts to expand and diversify its customer base.

31. The Registration Statement purported to warn that Cyan "currently generate[d] the majority of [its] revenue from the sale of [its] Z-Series platforms, and a decrease in purchases of these platforms ***may adversely affect [the Company]***." Yet, at the time of the IPO, the programs at Windstream supporting purchases from Cyan were already reaching their

end and Cyan was already failing in its efforts to expand and diversify its customer base.

32. Similarly, the Company's statements that it then "expect[ed its] revenue derived from sales to Windstream to decline ***as a percentage of [its] revenue*** in future periods ***as [it] expand[ed its] customer base*** both in the United States and internationally" was false and misleading as it suggested Cyan was successfully expanding its customer base. Even the statement that Cyan expected "sales to Windstream to decline in future periods" failed to sufficiently inform investors because it omitted and concealed the magnitude of Cyan's dependence on Windstream's fiber-to-the-tower and broadband stimulus projects and the immediacy of the loss of demand for its products that Cyan was facing in the second half of 2013.

33. Under the rules and regulations governing the preparation of the Registration Statement, Cyan knew and defendants should have disclosed that the vast bulk of Cyan's sales to Windstream were dependent upon two discrete projects, Windstream's involvement in Verizon's fiber-to-the-tower project and Verizon's participation in the broadband stimulus project, both of which were expected to be completed in the second half of 2013, and would necessarily result in a substantial reduction of revenues that Cyan would receive from Windstream. The various tower build-out projects that Cyan participated in with Windstream involved a four-to-six-month planning cycle, so that Cyan had at minimum a four-to-six-month window for future Windstream revenues. Indeed, in April 2013, prior to the IPO, Windstream had already terminated many of the project planning engineers at Windstream because the fiber-

to-the-tower build-out was quickly reaching its completion.

34. Pursuant to Item 303 of Regulation S-K [17 C.F.R. §229.303], and the SEC's related interpretive releases thereto, issuers are required to disclose events or uncertainties that have caused or are reasonably likely to cause the registrant's financial information not to be indicative of future operating results, including any known trends. At the time of the IPO, unbeknownst to investors, most of the revenues that Cyan obtained from Windstream were the result of two projects that were expected to be completed in late 2013, Verizon's fiber-to-the-tower build-out and Verizon's participation in the broadband stimulus initiative, and that as a result, sales to Windstream were not simply expected to decline in future periods, but that the two projects driving the bulk of those sales would be completed in the immediate future. Cyan was unable to replace those sales, and Cyan was unable to expand or to diversify its customer base. The adverse events and uncertainties associated with these declining trends were reasonably likely to have a material impact on Cyan's profitability and, therefore, were required to be disclosed in the Registration Statement.

35. In 1989, the SEC issued an interpretive release on Item 303 and the disclosures required under the regulation. *See* "Management's Discussion and Analysis of Financial Condition and Results of Operations," SEC Release No. 33-6835, 1989 SEC LEXIS 1011 (May 18, 1989) (hereinafter referred to as the "1989 Interpretive Release"). In the 1989 Interpretive Release, the SEC stated that:

> Required disclosure is based on currently known trends, events and uncertainties that

> are reasonably expected to have material effects, such as: A reduction in the registrant's product prices; erosion in the registrant's market share; changes in insurance coverage; or the likely non-renewal of a material contract.
>
> * * *
>
> A disclosure duty exists where a trend, demand, commitment, event or uncertainty is both presently known to management and reasonably likely to have material effects on the registrant's financial condition or results of operation.

Id. at *12-*13.

36. Furthermore, the 1989 Interpretive Release provided the following test to determine if disclosure under Item 303(a) is required:

> Where a trend, demand, commitment, event or uncertainty is known, management must make two assessments:
>
> (1) Is the known trend, demand, commitment, event or uncertainty likely to come to fruition? If management determines that it is not reasonably likely to occur, no disclosure is required.
>
> (2) If management cannot make that determination, it must evaluate objectively the consequences of the known trend, demand, commitment, event or uncertainty, on the assumption that it will come to fruition. Disclosure is then required unless management determines that a material effect on the registrant's financial condition or results is not reasonably likely to occur.

Id. at *19.

37. The adverse events and uncertainties associated with the Company's loss of sales to Windstream, its inability to replace those sales, and its inability to expand or diversify its customer base would have a negative impact on the Company's continuing operations. Accordingly, the Registration Statement was required to disclose these facts, but did not. These known trends, events, or uncertainties that were reasonably likely to have a material adverse effect on Cyan's sales revenues and profits, and consequently, on the Company's future operating results and present stock value, were negligently omitted from the Registration Statement. Indeed, in the SEC's letters commenting on the registration statement and requesting additional information, the SEC had specifically asked Cyan to explain the reasons for the increase in shipments of the Z-series platform in 2012 and to explain whether the increase was related to a trend or known demands or was the result of isolated events, which Cyan failed to do.

38. The IPO was successful for the Company and the underwriters, who sold 8,899,022 million shares of Cyan common stock to the public at $11 per share, raising approximately $97.9 million in gross proceeds for the Company ($87.2 million in aggregate net proceeds from the IPO after deducting underwriting discount, commissions and offering costs).

39. Within six months after the IPO, however, Cyan's stock price collapsed. On October 30, 2013, the price of the Company's stock plummeted to $4.98. Although Cyan reported record revenues of $37.7 million for the third quarter of 2013, on October 29, 2013, those revenues were in large part due to an unusual $9.8 million lease arrangement with Wind-

stream. In addition, Cyan advised investors that it was expecting fourth quarter 2013 revenues to decline to between $30 to $33 million, rather than benefit from the typical year-end seasonal increase, and that fourth quarter revenues from Windstream (which accounted for 50% of third quarter 2013 revenues) would be substantially less than in prior quarters. In fact, Cyan failed to meet that reduced forecast. On February 11, 2014, Cyan announced fourth quarter 2013 total revenues of $20.9 million. Specifically with respect to Windstream, Cyan revealed that Windstream revenues had declined to $2.3 million in the fourth quarter of 2013. That trend continued in the first quarter of 2014. On May 6, 2014, Cyan announced total first quarter revenue of $19 million and that Windstream had accounted for less that 10% of that amount. The stock now trades at around $3.85 per share, 35% of the price the stock was offered at in the IPO.

CLASS ACTION ALLEGATIONS

40. Plaintiffs bring this action as a class action on behalf of a class consisting of all those who purchased Cyan common stock pursuant and/or traceable to the Registration Statement and Prospectus issued in connection with the IPO (the "Class"). Excluded from the Class are defendants and their families, the officers and directors and affiliates of defendants, at all relevant times, members of their immediate families and their legal representatives, heirs, successors or assigns and any entity in which defendants have or had a controlling interest.

41. The members of the Class are so numerous that joinder of all members is impracticable. While the exact number of Class members is unknown to Plaintiffs at this time and can only be ascertained

through appropriate discovery, Plaintiffs believe that there are hundreds of members in the proposed Class. Record owners and other members of the Class may be identified from records maintained by Cyan or its transfer agent and may be notified of the pendency of this action by mail, using the form of notice similar to that customarily used in securities class actions.

42. Plaintiffs' claims are typical of the claims of the members of the Class as all members of the Class are similarly affected by defendants' wrongful conduct in violation of federal law that is complained of herein.

43. Plaintiffs will fairly and adequately protect the interests of the members of the Class and have retained counsel competent and experienced in class and securities litigation.

44. Common questions of law and fact exist as to all members of the Class and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Class are:

(a) whether defendants violated the 1933 Act;

(b) whether statements made by defendants to the investing public in the Registration Statement and Prospectus misrepresented material facts about the business and operations of Cyan; and

(c) to what extent the members of the Class have sustained damages and the proper measure of damages.

45. A class action is superior to all other available methods for the fair and efficient adjudication of this controversy since joinder of all members is impracti-

cable. Furthermore, as the damages suffered by individual Class members may be relatively small, the expense and burden of individual litigation make it impossible for members of the Class to individually redress the wrongs done to them. There will be no difficulty in the management of this action as a class action.

FIRST CAUSE OF ACTION

For Violations of §11 of the 1933 Act Against All Defendants

46. Plaintiffs incorporate ¶¶1-45 by reference.

47. This Count is brought pursuant to §11 of the 1933 Act, 15 U.S.C. §77k, on behalf of the Class, against all defendants.

48. The Registration Statement for the IPO was inaccurate and misleading, contained untrue statements of material facts, omitted to state other facts necessary to make the statements made not misleading, and omitted to state material facts required to be stated therein.

49. Defendants are strictly liable to Plaintiffs and the Class for the misstatements and omissions.

50. None of the defendants made a reasonable investigation or possessed reasonable grounds for the belief that the statements contained in the Registration Statement were true and without omissions of any material facts and were not misleading.

51. By reason of the conduct herein alleged, each defendant violated, and/or controlled a person who violated, §11 of the 1933 Act.

52. Plaintiffs acquired Cyan common stock traceable to the IPO.

53. Plaintiffs and the Class have sustained damages. The value of Cyan common stock has declined substantially subsequent to and due to defendants' violations.

54. At the time of their purchases of Cyan common stock, Plaintiffs and other members of the Class were without knowledge of the facts concerning the wrongful conduct alleged herein and could not have reasonably discovered those facts prior to the disclosures herein. Less than one year has elapsed from the time that Plaintiffs discovered or reasonably could have discovered the facts upon which this Complaint is based to the time that Plaintiffs commenced this action. Less than three years have elapsed between the time that the securities upon which this Count is based were offered to the public and the time Plaintiffs commenced this action.

SECOND CAUSE OF ACTION

For Violations of §12(a)(2) of the 1933 Act Against Cyan, the Executive Defendants and the Underwriter Defendants

55. Plaintiffs incorporate ¶¶1-54 by reference.

56. By means of the defective Prospectus, defendants Cyan, the Executive Defendants and the Underwriter Defendants promoted and sold Cyan stock to Plaintiffs and other members of the Class.

57. The Prospectus contained untrue statements of material fact, and concealed and failed to disclose material facts, as detailed above. The defendants named in this count owed Plaintiffs and the other members of the Class who purchased Cyan common stock pursuant to the Prospectus the duty to make a reasonable and diligent investigation of the statements contained in the Prospectus to ensure that

such statements were true and that there was no omission to state a material fact required to be stated in order to make the statements contained therein not misleading. These defendants, in the exercise of reasonable care, should have known of the misstatements and omissions contained in the Prospectus as set forth above.

58. Plaintiffs did not know, nor in the exercise of reasonable diligence could have known, of the untruths and omissions contained in the Prospectus at the time they acquired Cyan common stock.

59. By reason of the conduct alleged herein, these defendants violated §12(a)(2) of the 1933 Act. As a direct and proximate result of such violations, Plaintiffs and the other members of the Class who purchased Cyan common stock pursuant to the Prospectus sustained substantial damages in connection with their purchases of the stock. Accordingly, Plaintiffs and the other members of the Class who hold the common stock issued pursuant to the Prospectus have the right to rescind and recover the consideration paid for their shares, and hereby tender their common stock to the defendants sued herein. Class members who have sold their common stock seek damages to the extent permitted by law.

THIRD CAUSE OF ACTION

For Violations of §15 of the 1933 Act Against Cyan and the Individual Defendants

60. Plaintiffs incorporate ¶¶1-59 by reference.

61. This Count is brought pursuant to §15 of the 1933 Act against Cyan and the Individual Defendants.

62. The Individual Defendants each were control persons of Cyan by virtue of their positions as direc-

tors and/or senior officers of Cyan. The Individual Defendants each had a series of direct and/or indirect business and/or personal relationships with other directors and/or officers and/or major shareholders of Cyan. The Company controlled the Individual Defendants and all of Cyan's employees.

63. The Individual Defendants each were culpable participants in the violations of §11 of the 1933 Act alleged in the Count above, based on their having signed or authorized the signing of the Registration Statement and having otherwise participated in the process which allowed the IPO to be successfully completed.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray for relief and judgment, as follows:

A. Determining that this action is a proper class action, certifying Plaintiffs as Class representatives under the California Rules of Court and Rules of Civil Procedure, and Plaintiffs' counsel as Class counsel;

B. Awarding compensatory damages in favor of Plaintiffs and the other Class members against all defendants, jointly and severally, for all damages sustained as a result of defendants' wrongdoing, in an amount to be proven at trial, including interest thereon;

C. Awarding Plaintiffs and the Class their reasonable costs and expenses incurred in this action, including counsel fees and expert fees;

D. Awarding rescission or a rescissory measure of damages; and

E. Such equitable/injunctive or other relief as deemed appropriate by the Court.

JURY TRIAL DEMANDED

Plaintiffs hereby demand a trial by jury.

DATED: June 13, 2014

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